

NTSB Order No.  
EM-12

UNITED STATES OF AMERICA  
NATIONAL TRANSPORTATION SAFETY BOARD  
WASHINGTON, D. C.

Adopted by the National Transportation Safety Board  
at its office in Washington, D. C.,  
on the 14th day of July, 1970

CHESTER R. BENDER, Commandant,<sup>1</sup> United States Coast Guard

vs.

HOWARD REAGAN

Docket ME-10

ORDER ON RECONSIDERATION

The appellant, Howard Reagan, through his counsel, has filed a letter dated March 31, 1970,<sup>2</sup> petitioning the Board for rehearing, reargument, reconsideration, and oral argument, with respect to our Opinion and Order No. EM-9, adopted March 12, 1970, wherein we affirmed the commandant's decision revoking appellant's seaman's documents for misconduct under 46 U.S.C. 239(g). The commandant has filed as answer opposing the petition.

Petitions for rehearing, reargument, and reconsideration of Board orders are not provided for in the Board's rules governing seaman's appeals.<sup>3</sup> In our discretion, we have nevertheless decided to grant reconsideration on our own motion. However, we find that no useful purpose would be served by permitting rehearing or reargument.

The appellant also requested oral argument on the rehearing for the purpose of showing that revocation is an inappropriate and

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<sup>1</sup>By Order No. EM-10, dated June 24, 1970, the name of the new commandant of the U.S. Coast Guard, Admiral Chester R. Bender, is substituted in place of that of Admiral Willard J. Smith, his immediate predecessor, in all enforcement proceedings involving the U.S. Coast Guard pending before the Board.

<sup>2</sup>Appellant also filed a letter on April 13, 1970, with an attached copy of U.S. v. Heffner, 420 F. 2d 809, which we have examined and find to be inapposite.

<sup>3</sup>14 CFR 425.

harsh sanction for the offenses involved. Since we have denied rehearing, this request would normally be denied on that ground. In addition, however, our reexamination of the record and the pleadings fails to demonstrate that good cause exists for oral argument, particularly since the issue of sanction was before the Commandant and the Board on appeal from the Commandant's decision. On that appeal we specifically found that in view of the offenses found proved and "appellant's demonstrated propensity for irascibility and violent behavior aboard ship, we regard the sanction of revocation warranted in the interest of protecting the safety of life and property aboard U.S. merchant vessels." We are still unalteringly of that view.

On reconsideration, we find that on the basis of the pleadings and the entire record, no new matter of fact or law, either substantiated or previously unavailable, has been proffered, which would warrant reversing or modifying our previous order or taking any other action with respect thereto. We are of the view that appellant has not established any error of omission or commission of fact or law, nor has he otherwise shown that the relief requested should be granted. Moreover, his allegation that the sanction of revocation is excessive is a mere statement unsupported by any citation of fact or precedent. Furthermore, for reasons discussed in detail in Order EM-9, we concluded that revocation was required in the premises. We recognize that the sanction will prohibit appellant from further pursuing his mariner's career, but the paramount consideration in making our determination affirming revocation, is the public interest.

Finally, appellant contends that the Board committed error in its previous order, since it was silent with respect to his request for oral argument in the initial appeal before the board. We find this objection without merit. Appellant's brief, insofar as his request for oral argument is concerned, contained no more than a legend on its first page, reading: "Leave for Oral Argument requested -- 14 CFR 425.25." No reasons were presented why oral argument should be granted, and the Board found no good cause for granting it. Moreover, the Board's implicit denial of the request in its failure to set a date for such argument was in accordance with the procedure set forth in the regulation.<sup>4</sup> More importantly, the Board's omission affirmatively to deny appellant's casual request was in no sense prejudicial to him.

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<sup>4</sup>Section 425.25(b) reads as follows: "Oral argument before the Board will normally not be granted unless the Board finds good cause for such argument. If granted, the parties will be advised of the date."

ACCORDINGLY, IT IS ORDERED THAT:

1. Appellant's petition for relief from Board Order EM-9, be and it hereby is denied;
2. Appellant's request for oral argument on rehearing be and it hereby is denied;
3. On reconsideration on our own motion, Board Order No. EM-9, revoking appellant's seaman's documents, be and it hereby is affirmed.

BY THE NATIONAL TRANSPORTATION SAFETY BOARD:

JOHN H. REED  
Chairman

(SEAL)